

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036

T +1 212.872.1000
F +1 212.872.1002
akingump.com

Akin

Uri A. Itkin

+1 212.872.1027/fax: +1 212.872.1002
uitkint@akingump.com

June 6, 2023

VIA ECF

The Honorable Gregory H. Woods
United States District Judge
United States Courthouse
500 Pearl Street, Courtroom 12C
New York, NY 10007-1312

Re: *U.S. Bank, National Association, et. al. v. The Charitable Donor Advised Fund, L.P. et. al.*, No. 1:21-cv-11059

Dear Judge Woods:

I write on behalf of non-party Highland CLO Funding Ltd. (“HCLOF”) concerning the recent application by Defendants and Counterclaim-Plaintiffs Charitable Donor Advised Fund, LP and CLO HoldCo, Ltd. (collectively, the “CLOH Parties”) to seek international discovery from HCLOF via Letters of Request, ECF No 118. The application — made without any prior notice to HCLOF — is premature and improper.

With the Court’s permission, the CLOH Parties have added HCLOF as a counterclaim defendant in this case and asserted counterclaims against it. ECF Nos. 77, 79. HCLOF will respond to the counterclaims in due course in accordance with the Court’s rules. The CLOH Parties should not be permitted to circumvent this process in the meantime.

To be sure, HCLOF has not yet joined issue in this case and will move to dismiss the claims against it on various grounds, including lack of personal jurisdiction. But since the CLOH Parties are seeking to add HCLOF as a party, they should not be permitted to seek discovery from HCLOF through a non-party process. As it stands, the CLOH Parties’ application to serve Letters of Request on HCLOF in Guernsey as a non-party is effectively an *ex parte* application, which HCLOF has no opportunity to oppose in this Court. HCLOF should get that opportunity, however, as it should get a chance to explain that subjecting HCLOF to the overbroad application — comprising numerous deposition topics and 47 individual document requests spanning over 9 years — is burdensome and improper.

Accordingly, HCLOF respectfully requests that the Court delay and not rule on the CLOH Parties’ application until HCLOF appears in this case and Your Honor has the chance to hear from HCLOF. We thank the Court for its attention to this matter and look forward to discussing these issues with Your Honor.

Akin

The Honorable Gregory H. Woods
June 6, 2023
Page 2

Respectfully submitted,

/s/ Uri A. Itkin

Uri A. Itkin

cc: All counsel of record